

The Honorable Ronald B. Leighton

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HIDDEN HILLS MANAGEMENT, LLC,
and 334TH PLACE 2001, LLC,

Plaintiffs,

v.

AMTAX HOLDINGS 114, LLC, and
AMTAX HOLDINGS 169, LLC

Defendants.

No. 3:17-cv-06048-RBL

DECLARATION OF ARWEN R.
JOHNSON IN SUPPORT OF AMTAX
HOLDINGS 169, LLC'S OPPOSITION TO
334TH PLACE 2001, LLC'S MOTION TO
COMPEL AND FOR IN CAMERA
REVIEW OF CERTAIN DOCUMENTS

NOTE ON MOTION CALENDAR:
December 7, 2018

AMTAX HOLDINGS 114, LLC, AMTAX
HOLDINGS 169, and PARKWAY
APARTMENTS, LP

Counter-Plaintiffs,

v.

HIDDEN HILLS MANAGEMENT, LLC,
and 334TH PLACE 2001, LLC

Counter-Defendants.

1 I, Arwen R. Johnson, declare as follows:

2 1. I am a partner at the law firm of Boies Schiller Flexner, LLP, counsel for
3 Defendants/Counter-Plaintiffs AMTAX Holdings 114, LLC (“AMTAX 114”) and AMTAX
4 Holdings 169, LLC (“AMTAX 169” and, collectively with AMTAX 114, the “AMTAX
5 entities”) in the above-referenced action. I am an attorney admitted to practice law in the State
6 of California and have also been admitted *pro hac vice* to this Court. I make this declaration in
7 support of AMTAX 169’s Opposition to Plaintiff/Counter-Defendant 334th Place 2001, LLC’s
8 (“334th Place”) Motion to Compel and for In Camera Review of Certain Documents (the
9 “Motion”). I have personal knowledge of the facts stated herein, and could and would testify
10 competently thereto if called as witness in this matter.

11 2. Attached hereto as **Exhibit 1** is a true and correct copy of my November 7, 2018
12 cover letter to counsel for 334th Place, along with the enclosure Bates stamped
13 AMTAXHH0043756, which quantifies and provides the basis for each element of damages
14 supporting AMTAX 169’s allegation in Paragraph 74-75 of its operative counterclaims that the
15 unauthorized and/or excessive payments that 334th Place made to itself and its affiliates total
16 more than \$1.5 million.

17 3. Attached hereto as **Exhibit 2** is a true and correct copy of the privilege log that
18 the AMTAX entities produced on November 20, 2018. Alison Wadle and Michael Dalen, whose
19 names appear on the log, are in-house counsel at Alden Torch Financial LLC (“Alden Torch”),
20 the manager of the AMTAX entities. Eric Pettit and Christopher Caldwell, whose names also
21 appear on the log, are attorneys at my law firm who are representing the AMTAX entities in this
22 action.

23 4. Attached hereto as **Exhibit 3** is a true and correct copy of AMTAX 169’s
24 objections to 334th Place’s 30(b)(6) deposition notice to AMTAX 169, which were served on
25 October 12, 2018. Subject to and without waiving these objections, AMTAX 169 designated
26 Christopher Blake, the Director of Capital Transactions for Alden Torch, as its 30(b)(6) witness.

DECLARATION OF ARWEN R. JOHNSON
No. 3:17-cv-06048-RBL– 2

Boies Schiller Flexner LLP
725 South Figueroa Street, 31st Floor
Los Angeles, CA 90017-5524
Telephone: (213) 629-9040
Facsimile: (213) 629-9022

5. Attached hereto as **Exhibit 4** is a true and correct copy of highlighted excerpts from the transcript of the Rule 30(b)(6) deposition of Mr. Blake, the designated representative of AMTAX 169, which was held on October 26, 2018. I attended the deposition on behalf of AMTAX 169.

6. Attached hereto as **Exhibit 5** is a true and correct copy of highlighted excerpts from the transcript of the Rule 30(b)(6) deposition of Catherine Tamaro, the designated representative of 334th Place, which was commenced on October 24, 2018.

7. Following Mr. Blake's deposition, and upon my return to my office the following week, I confirmed that the December 13, 2017 email that counsel for 334th Place had shown Mr. Blake during his deposition was part of a series of privileged email communications (*see* privilege log entries nos. 277-84 and 287-290), but that the email had been inadvertently produced by my office. I further confirmed that Ms. Dias's December 13, 2017 reply email had also been inadvertently produced. Pursuant to Paragraph 9 of the parties' Stipulated Protective Order, I sent counsel for 334th Place a letter on November 2, 2018 wherein AMTAX 169 clawed back those two emails. That letter is attached as Exhibit H to the Declaration of Scott Pritchard, and the emails have been provided to the Court *in camera*. Should the Court wish to review *in camera* the series of emails sent about the investigation that are logged as entries 277-84 and 287-90 on AMTAX 169's privilege log, AMTAX 169 will make them available to the Court for *in camera* review.

8. On November 5, 2018, my colleague Eric Pettit and I conferred with counsel for 334th Place in good faith regarding the issues they had raised with respect to Mr. Blake's deposition testimony, our privilege objections, and the issues set forth in the parties' meet and confer correspondence. Mr. Pettit and I reiterated that the investigation of AMTAX 169's damages relating to the Parkway partnership had been directed by counsel in connection with and anticipation of the current litigation, and that while AMTAX 169 would of course provide all non-privileged facts supporting its damages claims, it would not disclose the substance of that

1 privileged investigation and AMTAX 169's protected communications about it. We agreed to
2 produce a privilege log on November 20, 2018 to further substantiate our claim of privilege,
3 which counsel for 334th Place claimed in subsequent meet and confer communications that they
4 needed in order to adequately assess our privilege claim. Counsel for 334th Place, however,
5 proceeded with its Motion before the parties had exchanged privilege logs.

6
7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 Dated this 3rd day of December, 2018 at Los Angeles, California.

10
11 /s/ Arwen R. Johnson
12 Arwen R. Johnson (admitted *pro hac vice*)
13 **BOIES SCHILLER FLEXNER LLP**
14 725 S Figueroa St 31st Floor
15 Los Angeles, CA 90017
16 ajohnson@bsflp.com
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CERTIFICATE OF SERVICE

On December 3, 2018, I caused to be served upon the below named counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the foregoing document.

David R. Goodnight Rita V. Latsinova J. Scott Pritchard Stoel Rives LLP 600 University Street, Suite 3600 Seattle, WA 98101 Phone: (206) 624-0900 Facsimile: (206) 386-7500 Email: david.goodnight@stoel.com Email: rita.latsinova@stoel.com Email: scott.pritchard@stoel.com	<input checked="" type="checkbox"/> Via the Clerk's eFiling Application <input type="checkbox"/> Via hand delivery <input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid <input type="checkbox"/> Via Overnight Delivery <input type="checkbox"/> Via Facsimile <input type="checkbox"/> Via Email
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED at Seattle, Washington, on December 3, 2018.

/s/ Steven D. Merriman
Steven D. Merriman